

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CYPRESS SCHOOL DISTRICT.

OAH CASE NO. 2010120022

ORDER GRANTING MOTION TO
DISMISS CLAIMS BEFORE
NOVEMBER 30, 2008

On November 30, 2010, attorney Michelle Ortega, on behalf of Student, filed a Request for Due Process Hearing (complaint) against the Cypress School District (District). On December 9, 2010, attorney S. Daniel Harbottle, on behalf of the District, filed a response to Student's complaint and a motion to strike portions of Student's complaint that occurred before November 30, 2008, for being outside the two-year statute of limitations, which has been renamed as a motion to dismiss claims before November 30, 2008. Student filed no response to District's motion to strike portions of Student's complaint.

APPLICABLE LAW

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a complaint due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

An Individuals with Disabilities in Education Act (IDEA) claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that he or she has a legal claim. (See, *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect.

DISCUSSION

Student alleges in the complaint that the District has committed both procedural and substantive violations of the IDEA thus denying Student a free appropriate public education (FAPE) for the 2008-2009, 2009-2010 and 2010-2011 school years. Student provides background information in the complaint beginning in 2004. Student has made no claim that Student's parents were prevented from filing a complaint due to specific misrepresentations by the District that it had resolved the problem forming the basis of the complaint, or the District was withholding of information from the parent that was required to be provided to the parent. Accordingly, any claim made by Student prior to November 30, 2008 is barred. However, all information provided in Student's complaint may be considered for background purposes.

ORDER

District's motion to dismiss all claims before November 30, 2008, is granted.

Dated: December 22, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings